

Sources of Legal Liability among Physical Education Teachers

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Abstract

Legal issues in Physical Education are very germane to sport and physical activity development. Consequently, Physical Education teachers should be involved in studying laws that relates to P.E in the course of their professional preparation. It is worth noting that today, people are becoming more aware of their rights under the law. This has further awakened the need to ensure that Physical Education teachers are made to know the legal implications of negligently caused injuries in P.E class and also fashion-out “preventive mentality” in respect of these injuries. Unfortunately, it has been discovered that sports law is not included in the curriculum of physical Education in Nigeria. When dealing with various types of Physical Education programmes, P.E. teachers must look to protect themselves from any tortuous liability. To be able to do this, they must be familiar with the scenerios in which they can be vulnerable to tortuous liability.

Negligence is a tort that is often used to implicate P.E. teachers. It is very important that they understand the nuisances of tortuous liability and its relationship to P.E profession. They should also be aware of the legal defenses available to them if, despite all precautions, they are accused for negligence. The purpose of this study therefore is to discuss the concept of tortuous liability, what constitute negligence, sources of negligence in sport and the defense against negligence. This will reduce the possibility of there been liable.

Keywords: Negligence, Tortuous, Sport participation, Liable, Sanction

1. Introduction

Experts in the field of Physical Education are perturbed by the non-inclusion of sport law in the curriculum of Physical Education in tertiary institutions in Nigeria for instance. Legal issues in Physical Education are very germane to physical activity development; P.E. teachers should therefore be involved in studying laws that are related to P.E. This is because undermining these legal issues may have negative consequences on Physical Education development in Nigeria (Adesanya, 1992). Hence, major conditions and parameters as legal issues in Physical Education/Sports must be given enough priority.

It is worth noting too that the society is getting more enlightened as people are increasingly aware of their legal rights in all fields of human endeavour. This has further awaken the need to make know the legal implications of negligently caused injuries in P.E, moreso, when one realizes that victim will want to look for various sources to foot their medical bills except from their own pockets. Consequently, there is the need to fashion-out ” preventive mentality” in respect of Physical Education/Sport programmes and aspects of general standard , most especially when one may have to cough out the litigation fees for negligence due to ignorance. We are all aware that there is no room for ignorance in law.

An examination of the long list of items in the Exclusive Legislative list in Nigeria for instance, revealed the non-inclusion of Physical Education/Sports. Also, a perusal of items under Second Schedule of part II. Of the Concurrent Legislative list of 1999 Constitution of the Federal Republic of Nigeria revealed the non-inclusion of

sport also. So, legal issues in P.E/Sports are concerned with the determination of rights and duties. Duty is the corollary of rights in the process of social interaction *man qua man*. While right describes what the person's duty is what is due to the other person with whom he is in social interactions (Agbojimi, 2002).

The point at which law and Physical Education find expression is Section 40 of 1999 Constitution of the Federal Republic of Nigeria which guarantees to every person the freedom to assemble freely, and associate with others, and in particular, to form or belong to any other association for protection of one's interest (Agbojimi, 2002). When dealing with various types of Physical Education programmes organizations, P.E teachers must look to protect themselves from any legal liability. To be able to do this, they must be familiar with the scenarios in which they can be vulnerable to legal liability. Legal liability can be defined as one taking responsibility for an act of omission or commission. Legal liability is caused by 'Negligence'. Negligence consists of the failure to act as a reasonably prudent as the persons would under the circumstances involved. It can be seen as any conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm. Negligence is a tort that is often used to implicate P.E teachers. It is very important that P.E. teachers understand the nuisances of tortuous liability and its relationship with the P.E profession. They should also be aware of the legal defenses available to them if, despite all precautions, they are accused of negligence (Irwin, Sutton, and McCarthy, 2002). The purpose of this study therefore is to discuss the concept of tortuous liability, what constitutes negligence, sources of negligence and defense against negligence. This will reduce the possibility of there been liable and assist in the development of Physical Education profession.

2. Tortuous Liability

Tort law is more deeply embedded in the past than any other branch of the common laws. Until comparatively recent times, a plaintiff under common law could sue in tort only if he could fit his claim into one of the recognized forms of action for which some particular writ of summons are available. In striking contrast to the development in common law, tort law in legal systems based on the civil law, seems to have advanced much from its historical roots (James, 2006). He also reported that the great jurist of the law of nature in the 17th and 18th centuries enunciated the general principle that everybody shall be held liable for the damage caused by his fault and this principle has been embodied in various forms in many civil codes. An example is presented by article 1382 of the French code or Napoleon code. Many other civil codes based on the French mode have subsequently adopted similar provision. Other legal systems in the civil-law sphere have chosen somewhat more restrictive solution. The German civil code, for example grants protection to various specifically mentioned interest (Encyclopaedia Britannica). The law of torts in the earlier stage of its evolution usually consisted of a miscellaneous and more or less unconnected group of specific rules protecting a few particular interests against harmful interferences of a particular kind. Roman law for example, knew three principal torts:

Initurie – Intentional interference with persons

Furtum – Intentional interference with properties

Lex Aquila – covering losses caused by negligence

The law of tort is the branch of the common law which is of immense importance in Nigeria. The rapid commercial and industrial growth which the country has experienced in the last few decades has ensured that there will never be a shortage of litigation in the major areas of tort liability, such as negligence (Kodilinye, 1990). Okupa (1992), Agbojimi (2002) and Yakasai (2002) revealed that it is in the area of tortuous liability that the interesting lines between law and PE/Sports are prominent. As cases arising from P.E/Sporting activities seldom come before the courts in Nigeria, its jurisprudence is yet to take form but with modernization and exposure of people in this age of technology, we shall soon get to that point when students will institute legal action on issues that affect their well being. Ogunyemi (2008) revealed that most Nigerian students are beginning to know their rights under the law.

Tortuous liability arises as a result of breach of duty primarily fixed by the law; this duty is toward persons generally and its breach is redressible by an action for unliquidated damages (Reade and Bucher, 1975, Okupa, 1992, Agbojimi, 2002). Torts is a branch of private law with its comparison, the law of contracts, it spells out the legal rules which regulate "civil obligation". Torts can be described as a civil wrong involving a branch of duty fixed by the law, such duty being owned to persons generally and its beach being redressible primarily by an action for damages (Kodihinye, 1990 and Ogunyemi, 2002).

Wong (1994) perceived 'tort' as a legal term used in both common and civil-law systems to describe various wrongs that may give rise to civil proceedings, mainly in the form of an action for damages. It is concerned with the prevention of or compensation for harm sustained by a person through the unlawful or dangerous activities of others. The word 'tort' has its origin in the Latin word for tortuous, which means 'twisted or 'crooked'. It thus describes

vividly the irregularity of the harmful conduct for which the law of tort provides a remedy. It is a harmful act against a person which gives the person the right to collect money for damage he suffered. Bucher (1975) and Yakasai (2002) asserted that P.E. teachers' liability is 'tort' liability, that is, it is liability for personal or property injuries caused through the defendant's negligence. Any tort action involves proof of four elements;

- That the defendant owed a duty to avoid unreasonable risk to others
- That the defendant failed to observe that duty
- That the failure to observe that duty caused the damage which occurred
- That the damage in fact occurred to plaintiff.

3. P.E Teachers and Torts

P.E teachers are subject to unusual rule covering tort liability. That is, they are liable for injuries resulting from their negligence and not liable, regardless of the kind of injury, if not negligent.

3.1 Concept of Negligence

From a practical point of view, negligence is the most important and dynamic of all torts. Its emergence as a separate tort in the early part of the nineteenth century coincided with the industrial revolution in England and the advent of machinery, railway and motor vehicles; and to this day it has retained its function as the principal means of compensating the victims of accidents, particularly those occurring in factories or on the roads. In Nigeria, negligence has only comparatively recently begun to assume the prominence which it has long enjoyed in the industrial common law countries and the increase in negligence litigation in Nigeria is directly linked with the dramatic growth of commercial activity and road traffic during the post-independence period (Kodilinye, 1990). Yakasai (2002) defined negligence as the failure to act as a reasonable, prudent and careful person would act under the circumstance to avoid exposing others to unreasonable danger or risk of injury or harm.

Bucher (1975) asserted that negligence is something that a reasonable person would not do or failure to do something that a reasonable person would do. It is failure to carry out one's legal duty or failure to do something that could have been done with common sense. Agbonjimi (2002) noted that there are four fundamental conditions that must be tested by the jury and considered with respect to the particular circumstances of the case in order to prove negligence.

- A right must exist on the part of the plaintiff, and a corresponding duty must exist on the part of the defendant towards the plaintiff's right.
- There must be a breach or failure on the part of the defendant to observe the duty towards the corresponding right of the plaintiff.
- That breach of duty must be the cause of the damages which occurred.
- The plaintiff must suffer damages.

3.2 Sources of Negligence

3.2.1 Supervision

According to Adesanya (1992), the importance of supervision in P.E/Sports cannot be over emphasized. Many cases involving negligent behaviours have been attributable to teachers' lack of adequate supervision during physical activities. However, mere lack of supervision may not necessarily create liability, but the determining factor is whether or not such lack or inadequate supervision was the proximate cause of the injury. However, Emiola (1978) asserted that lack of supervision during sporting activities is frequently used as ground for litigation. It is lack of supervision if you fail to take appropriate care to prevent an accident. Along with the general duties associated with supervision, is matching and equating opponents in commonsense manner (Nygaard and Boon, 1985). In the case of Brooks V Board of Educ. a seventh-grader was injured in a gym class during a game of line soccer. The suit claimed that a physical mismatch was created by the negligent pairing of the students. The court ruled for the plaintiff, saying that the pairing for such a game, including both the site and the equipment was hazardous, hence the respondent was liable thus, was guilty of negligence.

3.2.2 Proper Instruction

According to Bucher (1975) and Yakasai (2002), this is a situation where the teacher failed to employ due care to give adequate guide and warning. For instance, if the instructor, although responsible for supervision absented himself or herself from the physical activity area. Cases involving various area of instruction frequently come before the courts in developed nations. The major complaint is that the player did not receive adequate instruction in the

particular activity and for this reason, there was accident. Two examples of this are *Larson v Inde. School Dist. No. 314* and *Braham and Thompson v Seattle School Dist. No. 1*. In the *Larson* case, an eighth-grader broke his neck while attempting to perform a head spring. The plaintiff showed that there was no reasonable progression of instruction in the preliminary gymnastics exercises leading up to the running head spring as outlined in the curriculum guide, and therefore the instruction was negligence. The *Thompson* case addressed the issue of warning the player of the inherent risk associated with football. Thompson a 15-year-old running back, caught a pass on the sideline and attempted to lower his head and run through an approaching tackler. The tragic consequence was a severed spinal cord injury. The teacher was liable in this case because he did not warn the student of the inherent risk involved in making contact with the head while playing. Consequently, the plaintiff was awarded 6.4 million dollar (Nygaard and Boon, 1985).

3.2.3 Equipment and Facilities

According to Pennman (1977) and Ajibua (2001), facility is used to designate "play area" which are surfaced and equipped with such permanent or semi-permanent equipment as post, backboards and backstops. The planning, scheduling and maintenance of facilities and equipment should be the function of any P.E teachers (McQuila and Abraham, 2010). For example, if a student is injured in a tumbling race because the mat was not firmly fixed or slippery, the teacher will be found liable. The court will favour the injured student when official(s) have prior knowledge of hazard or condition which must be adjusted or repaired. An example is *Gillmore V. London county council (1938)*. The plaintiff was a member of a physical training class run by the defendant. During an exercise in which members of the class were jumping at each other, one of them was injured through losing his balance on a floor which was slippery (although of course, he had consented to the physical contacts which occurred in the course of the jumping exercise). The defense of assumption of risk argued by the defendant in the case could not stand; he ought to have applied commonsense and disallowed the athletes from exercising on a slippery ground.

3.2.4 Injuries from Sport Participation

According to Emiola (1978), one area of athletic participant injuries is equal competition. Injuries arising from activities too advanced for the skill level, strength and maturation of the pupils can bring about suit of negligence against P.E teacher.

It is a known principle in P.E. profession that activities must be commensurate with the abilities of athletes.

4. Defense Against Tort

Should a suit be brought against a P.E. teacher for negligent action of some kind, he may base his legal defense on one or more of the following premises;

4.1 Proximate Cause

Negligence must be the direct and immediate cause remotely concerned with the injury or else the claim will be disallowed. Proximate cause is the situation where it could be established that negligence is closely connected with the injury. The teacher so charged (the defendant) may defend himself by basing his case on certain defenses like 'Act of God'. Furthermore, the negligence of the defendant may not have been the proximate cause of the plaintiffs injury, for example in the case of *Ohmon V. Board of the city of New York, 88 N.V.S. 2n 273 (1949)*, it was declared that when a 13 year old pupil in a public school was struck in the eye by a pencil thrown by another pupil to a third pupil who stepped aside, the case of injury was an unforeseen act of the pupil who threw the pencil and that absence of the teacher (who was taking stock in a closet nearby the gymnasium) was not the proximate cause of injury. Therefore the teacher could not be held liable. The negligence conduct must be a substantial factor in causing the injury or the claim will be disallowed.

4.2 Contributory Negligence

The law of negligence as applied to Physical Education is, prima facie, the same as is applied to determine negligence in any other field of activity and is based on Lord Atkins "neighborhood," *Donoghue v Steveson (1932) AC 62*. Thus the defendant must owe the the claimant a duty to take reasonable care not to cause him harm, the defendant must have breached that duty by falling below the standard of behavior acceptable for that particular activity and that reasonably foreseeable harm must have been caused as a result of the breach of duty. The defense that claimant may face is that the act of the defendant fell below the standard of a reasonable P.E teacher.

Kodilinye (1990) viewed contributory negligence basically as negligence of the plaintiff himself which combines with the defendant's negligence in bringing about the injury to the plaintiff. He further asserted that the conduct of the defendant under this situation had not lived up to that of the hypothetical reasonable and prudent man, but that the plaintiff would not have been injured or if injured at all such injuries would have being minimal if he (plaintiff)

had behaved carefully. Nwegbu (1978) pointed out that it is the conduct on the part of the plaintiff, contributing as a legal cause to the injury he has suffered. Age can be a strong determinant of whether the injured person was matured enough to understand the consequence of his action, eighteen years of age seems to be the magic number in Nigeria. Bucher (1975) agreed that contributory negligence may occur when the injured person does not act as a reasonably prudent person of his age should act. In this case the negligence of the P.E. Teacher is cancelled. Adefarati J. in *Olayinka V. Latin* (1972) is a case in which an action for damages was brought under the fatal accident Law 1961 on behalf of the dependants of a cyclist who was knocked down and killed as a result of the defendants negligent driving. The deceased was held to have been contributorily negligent in entering the high way without first making sure it is safe to do so (Kodilinye, 1990).

4.3 Unavoidable Accident

Emiola (1978) postulated that if an injury is not caused by negligence in its legal context, it is the result of accident unavoidability strongly implying unforeseeability on behalf of all parties. In such case no liabilities can be asserted against the teacher. Hyath (1977) viewed unavoidable accident as an event which cannot possibly be prevented by the exercise of ordinary care, caution or skill. It is a defense for the defendant to establish that a certain event or result occurred despite the exercise of reasonable care on his part.

4.4 *Volenti Non Fit Injuria* (Assumption of Risk)

According to Kodilinye (1990) and Agbonjimi (2002), assumption of risk means no injury is done to one who consent. In other words, no person can enforce a right which he has voluntarily waived or abandoned. Consent means in effect, the agreement of the plaintiff, expressed or implied to exempt the defendant from duty care he would otherwise have owed. Vendien and Nixon (1985) pointed out there are lots of cases in which a party may suffer injuries for which tort law will not provide him with any remedy either because he consented or at least assented to the doing of the act which caused him injury. One who has invited or assented to an act being done toward him cannot when he suffers from it complain of it as a wrong.' Adedeji (1976) and Yakasai (2002) refer to assumption of risks as a risk which is assumed that an individual takes when engaging in various contact sports and games. The participant voluntarily and fully-assumed the dangers and accepted to abide by the consequences.

4.5 Act of God

Kodilinye (1990) asserted that where the injuries caused to a student is the result of natural forces free from human intervention, the defense of the 'Act of God' may be available. For example, if a player is struck by thunder during a training session, the P.E. teacher will not be liable because it is a natural occurrence which he cannot control. The defendant will not be made liable for an extraordinary act of nature which he could not reasonably have anticipated. Emiola (1978) postulated that 'Act of God' is a situation that exists because of certain conditions that are beyond the control of human beings, as lightning striking and injuring a soccer player. However, the courts have kept this defense within a very narrow compass, and there appears to be only few reported cases in which it has been allowed (Kodilinye, 1990).

4.6 Sudden Emergency

Emiola (1978) perceived this as pertinent in cases where the exigencies of the situation require immediate action on the part of a teacher and as a result, an accident occurs. For instance, if a student is drowning in the swimming pool and the P.E. teacher is running there to save him and in the course of his running if he collides with a pupil who sustains an injury, such a teacher will not be liable.

5. Conclusion and Recommendations

Negligence, therefore, is recognized as a special area of tort liability which has to be proved before any form of sanction acceptable in law can be invoked. Physical Education teachers need to be very conscious of their activities in P.E lesson so that they will not be liable. It is very important that P.E teachers at various levels are well-tutored in the area of Legal liabilities in Physical Education. To achieve this, the following recommendations are made:

- 1) Laws related to Physical Education and Sports must be included in the curriculum of P.E at the undergraduate level.
- 2) P.E teacher should consider age (Chronological and training age), sex, and developmental level of learners.
- 3) P.E. teacher must be present and punctual for practical lessons where items of equipment are to be used by students
- 4) Equipment must be removed from the play ground and properly stored under lock and key.

- 5) Facilities such as playgrounds and swimming pool should be inspected before they are put to use by the learner so as to remove any foreseeable hazard that may cause injuries to participants

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